

EXHIBIT 3

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM

Michael Mann and Meryl Mann (the "Manns") hereby object to the Notice of Trustee's Determination of Claim dated August 28, 2009 ("Determination Letter"), attached as Exhibit A, as described herein.

BACKGROUND

1. In or about December 1995, the Manns opened an account (Account No. 1-CM363-3-4) with Bernard L. Madoff Investment Securities LLC ("Madoff") in the name of Michael Mann and Meryl Mann, JT WROS (the "Mann Customer Account").¹ The Manns are "customers" of Madoff, as defined by the Securities Investor Protection Act ("SIPA").

¹ All personal information relating to the Mann Account has been redacted for security reasons.

2. From the creation of the account, the Manns received regular communications from Madoff, including monthly statements, trade confirmations, and quarterly portfolio management reports.

3. The Manns' final Madoff statement dated November 30, 2008 (the "Final Madoff Statement") shows that they own securities with a market value of \$7,297,867.45 in account 1-CM363-3 (less positions in account 1-CM363-4) for a total of \$7,192,467.45. A copy of the Final Madoff Statement is annexed to their Customer Claim.

4. On December 11, 2008, an action was commenced against Madoff by the Securities & Exchange Commission in the United States District Court for the Southern District of New York. On December 15, 2008, this liquidation proceeding was commenced pursuant to the SIPA. See Order, Securities and Exchange Commission v. Madoff, No. 08-10791 (S.D.N.Y. Dec. 15, 2008) (ordering relief under SIPA and transferring proceeding to the United States Bankruptcy Court for the Southern District of New York) [Dkt. No. 4]. Irving Picard was appointed Trustee ("Trustee"), charged, *inter alia*, with overseeing the liquidation of Madoff and processing customer claims for money pursuant to SIPA. *Id.*; 15 U.S.C. 78fff-1(a).

5. On December 23, 2008, the Court issued an Order directing the Trustee to disseminate notice and claim forms to Madoff customers and setting forth claim-filing deadlines. See Order [Dkt. No. 12].

6. The December 23, 2008 Order further provided that, to the extent the Madoff Trustee disagrees with the amount set forth on a customer claim form, the BMIS Trustee "shall notify such claimant by mail of their determination that the claim is disallowed, in whole or in part, **and the reason therefor**" See Order at 6 (emphasis added) [Dkt. No. 12].

7. On or about June 17, 2009, the Manns timely filed a claim for the Mann Customer Account for securities (the "Mann Customer Claim") based on the November 30, 2008

statement from Madoff in the amount of \$7,192,467.45. A copy of the Mann Customer Claim with the Final Madoff Statement is attached as Exhibit B.

8. On August 28, 2009, the Trustee sent the Manns the Determination Letter rejecting the claim and stating they were not entitled to a payment based on (a) the total in the Mann Account (b) less withdrawals, and (c) less any appreciation.

GROUND FOR OBJECTION

I. THE DETERMINATION LETTER FAILS TO COMPLY WITH THE COURT'S ORDER

9. The Determination Letter fails to comply with this Court's December 23, 2008 Order, which directs the Trustee to satisfy customer claims in accordance "with the Debtor's books and records." Dec. 23, 2008 Order at 5 [Dkt. No. 12]. The Mann Customer Claim was evidenced by the Final Madoff Statement showing a final balance of \$7,192,467.45 and listing the securities purportedly purchased for the account, which reflects the "Debtor's books and records" and by which the Trustee is bound absent proof that the owner of the Mann Account did not have a "legitimate expectation" that the balance on the Final Madoff Statement, confirmations, credit advices and portfolio management report represented their property.

II. THE TRUSTEE DOES NOT SET FORTH THE LEGAL BASIS FOR DISALLOWING THE CLAIM IN FULL

10. The Trustee failed to set forth a legal basis for the position he has taken for the calculation of the claim *See* Determination Letter. The Determination Letter:

(a) does not clearly provide "the reason" for the disallowance, as required by the Court's December 23, 2008 Order, *see* Order [Dkt. No. 12];

(b) is insufficient to rebut the prima facie validity of the Customer Claim as provided in Section 502(a) of the Bankruptcy Code and Fed. R. Bankr. P. 3001(f);

(c) violates general principles of applicable law requiring that an objection to a proof of claim set forth, at a minimum, the relevant facts and legal theories upon which the objection is based. *See, e.g.*, Collier on Bankruptcy ¶ 3007.01(3) (15th ed.) (“[A]n objection to a claim should . . . meet the [pleading] standards of an answer; *In re Enron Corp.*, No. 01-16034, 2003 Bankr. LEXIS 2261, at *25 (Bankr. S.D.N.Y. Jan. 13, 2003) (same); and

(d) includes an exhibit which purportedly calculates the money deposited less subsequent withdrawals, but is completely unsubstantiated and incorrect.

III. THE TRUSTEE HAS FAILED TO HONOR CUSTOMER EXPECTATION

11. The Trustee has failed to fulfill the requirement that he honor the legitimate expectations of a customer.

12. The legislative history of SIPA makes clear that Congress’ intent in enacting the legislation was to protect the legitimate expectations of customers. Congressman Robert Eckhardt, (D) Texas, sponsor of amendments to SIPA to increase the amount of advance available to customers and expedite the process, commented on the purpose of the legislation as follows:

“Under present law, because securities belonging to customers may have been lost, improperly hypothecated, misappropriated, *never purchased* or even stolen, it is not always possible to provide to customers that which they expect to receive, that is, securities which they maintained in their brokerage account. . . . By seeking to make customer accounts whole and returning them to customers in the form they existed on the filing date, the amendments . . . would satisfy the customers’ legitimate expectations”

S. Rep. No. 95-763, at 2 (1978) (*emphasis added*).

A customer generally expects to receive *what he believes* is in his account at the time the stockbroker ceases business. But because securities may have been lost, improperly hypothecated, misappropriated, *never purchased*, or even stolen, it is not always possible to provide to customers that which they expect to

receive, that is, securities which they maintained in their brokerage account. . . . By seeking to make customer accounts whole and returning them to customers in the form they existed on the filing date, the amendments . . . would satisfy customers' legitimate expectations

S. Rep. No. 95-763, at 2 (1978) (emphasis added).

13. The Securities Investor Protection Corporation ("SIPC"), charged with administering SIPA, acknowledged that it was bound by the statute and the rules to satisfy the reasonable expectations of customers even when the securities had never been purchased, in the brief it submitted to the Court of Appeals for the Second Circuit as follows:

Reasonable and legitimate expectations on the filing date are controlling even where inconsistent with transaction reality. Thus, for example, where a claimant orders a securities purchase and receives a written confirmation statement reflecting that purchase, the claimant generally has a reasonable expectation that he or she holds the securities identified in the confirmation and therefore generally is entitled to recover those securities (within the limits of SIPA) even where the purchase never actually occurred and the debtor instead converted the cash deposited by the claimant to fund that purchase...[T]his emphasis on the reasonable and legitimate customer expectations frequently yields much greater customer protection than would be the case if the transaction reality, not the claimants expectations, were controlling, as this court's earlier opinion in this liquidation well illustrates.

Brief of the Appellant SIPC at 23-24.

14. Based on regular statements, confirmation reports and other communications received from Madoff, the Manns at all times reasonably believed and expected that Madoff executed such transactions and that the Mann Account actually held such securities.

15. The Trustee's position in the Madoff case is completely inconsistent with the purpose and goals of SIPA and the position that SIPC, has taken unequivocally with respect to the treatment of customers in accordance with their reasonable expectations reflected in the communications from the broker-dealer.

IV. THE TRUSTEE’S DEFINITION OF “NET EQUITY” IS INCONSISTENT WITH SIPA AND SIPA RULES, PRACTICE AND PRONOUNCEMENT AND CASE LAW INTERPRETING THE STATUS AND RULES

16. The Trustee failed to set forth a legal basis for the position he has taken that he can reduce the amount of the claim by appreciation in the Mann Customer Account or calculate the claim by counting only investment principal less withdrawals without regard to the securities reflected in the Manns’ Final Madoff Statement. No legal basis for the method exists. The Trustee’s calculation violates SIPA.

17. 15 U.S.C. Section 78fff-2(b) provides that a customer’s claim shall be allowed in the amount of the customer’s “net equity.” 15 U.S.C. § 78fff-2(b). The Trustee calculates “net equity” by reducing the principal contributed to the account less any withdrawals or appreciation, without regard to any gains reflected in the Final Madoff Statement and any prior statement delivered by Madoff to the customer. This is incorrect for the following reasons:

(a) the Trustee’s method of calculating the customer claim is inconsistent with the language of the statute. SIPA defines a customer’s net equity claim as the value of the customer’s “securities positions” in customer’s account, less any amount the customer owes the debtor, as of the date of the filing of the SIPA liquidation:

“The term ‘net equity’ means the dollar amount of the account or accounts of a customer, to be determined by –

(A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date, all securities positions of such customer . . .; minus

(B) any indebtedness of such customer to the debtor on the filing date . . .”²

² The “indebtedness” of the customer to the debtor refers to cash or securities owed to the debtor, which is most often in the context of a customer having borrowed from the debtor on margin. *See, e.g.*, H.R. Rep. No. 95-746 at 21 (1977) (describing customers owing cash or securities to the stockbroker as “margin customers”); *Rich v. NYSE*, 522 F.2d 153, 156 (2d Cir. 1975) (noting that, under the 1970 statutory regime, when there were shortages in

15 U.S.C. § 78lll(11). The Trustee's proposed formulation has no support in the language of the statute or interpreting case law and in fact, adds words and concepts to the statute which do not exist.

(b) The Trustee's method is inconsistent with the Rules promulgated under SIPA. The Series 500 Rules promulgated under SIPA by the Securities Investor Protection Corporation ("SIPC") provide for the classification of claims for cash or securities in accordance with the written transaction confirmations sent by the broker-dealer to the customer. 17 C.F.R. 300.500. Pursuant to the Rule, a customer has a claim for securities if the customer has received written confirmation that the securities have been purchased or sold for the account.

(c) The Trustee's method is inconsistent with the legislative history of the statute. SIPA's legislative history emphasizes Congress' intention that the statute protect customer expectations by ensuring that customers of retail brokerage firms can rely on their account statements. The Madoff statements and confirmations sent to the Manns on their Account indicated that the Mann Account owned a list of blue chip securities. It makes no difference whether the securities were ever actually purchased.

(d) The Trustee's formula is an improper and wholly inadequate measure of loss. The Manns deposited funds with Madoff with the expectation the amount would grow—the Mann Account statements showed such growth, and the balance on the Final Madoff Statement reflects the benefit of this bargain. In *Visconsi v. Lehman Brothers, Inc.*, No. 06-3304, 244 Fed. Appx. 708, 713-14 (6th Cir. 2007) the Court declined to set aside an arbitration award that appeared to apply an expectancy measure of damages against a

available securities to satisfy "net equity" claims, customers received cash for their securities "less, in the case of holders of margin accounts, amounts owed" to the broker); *In re First Street Sec. Corp.*, 34 B.R. 492, 497 (Bankr. S.D. Fla. 1983) (offsetting against claim amount of indebtedness customer owed to the debtor where unauthorized stock purchase was funded in part by borrowing on margin).

successor in a Ponzi scheme case and rejected the money in / money out formula as not reflecting the expectations of the parties. *Id.* The Court explained:

Lehman's out-of-pocket theory misapprehends the harm suffered by Plaintiffs and the facts of this case. Plaintiffs gave \$21 million to Gruttadauria, not to hide under a rock or lock in a safe, but for the express purpose of investment, with a hope – indeed a reasonable expectation – that it would grow. Thus, the out-of-pocket theory, which seeks to restore to Plaintiffs only the \$21 million they originally invested less their subsequent withdrawals, is a wholly inadequate measure of damages. Had Gruttadauria invested Plaintiffs' money as requested, their funds would have likely grown immensely, especially considering that Plaintiffs invested primarily throughout the mid-1990s, which, had they hired an honest broker . . . , would have placed their money in the stock market during one of the strongest bull markets in recent memory. In fact, the fictitious statements issued by Lehman, which were designed to track Plaintiffs' funds as if they had been properly invested, indicate that Plaintiffs' accounts would have grown to more than \$37.9 million (even accounting for the withdrawal of more than \$31.3 million). Plaintiffs thus could have reasonably believed that they were entitled to the full \$37.9 million balance shown, regardless of the amounts of their previous deposits and withdrawals.

Id. This applies precisely to the Mann Customer Claim.

(e) The Trustee's Determination Letter is contrary to SIPC's own policies and practices, as reflected in the sworn testimony of Stephen Harbeck, SIPC's president and CEO, and its actions in similar liquidation proceedings. For example, in the *New Times* SIPA liquidation, in the context of discussing claims filing deadlines, Harbeck acknowledged that if broker-dealer customers have been led to believe that "real existing" securities had been purchased for their accounts, then those customers are entitled to the full value of their securities positions as of the filing date, even if that value represents a substantial increase from the purported purchase price of the securities and even if the securities had never been purchased. Harbeck testified as follows:

Harbeck: [I]f you file within sixty days, you'll get the securities, without question. Whether – if they triple in value, you'll get the securities. . . . Even if they're not there.

Court: Even if they're not there.

Harbeck: Correct.

Court: In other words, if the money was diverted, converted –

Harbeck: And the securities were never purchased.

Court: Okay.

Harbeck: And if those positions triple, we will gladly give the people their securities positions.

Transcript at 37-39, *In re New Times Securities Services, Inc.*, No. 00-8178 (Bankr. E.D.N.Y. July 28, 2000) (Exhibit C).

Moreover, SIPC faced very similar circumstances in the New Times Securities Services, Inc. (“New Times”) liquidation and took a very different position than it is taking in the Madoff case in support of the Trustee. There, the New Times Trustee’s position on “net equity” was in full accord with SIPA, and thus directly contrary to the Trustee’s position in this case. Specifically, with respect to any claims that were based on confirmations and account statements reflecting securities positions in “real” securities that could have been purchased (i.e., securities that actually existed on the public market and whose valuations were objectively and publicly verifiable by the customers), the New Times Trustee allowed all such net equity claims to the full extent of the filing date valuations of those securities, even though none of the securities identified in those records had ever, in fact, been purchased by the broker-dealer.³

³ As with Madoff Securities and Bernard Madoff, New Times Securities and its principal, William Goren, defrauded scores of investors by providing them with confirmations and account statements reflecting purported securities investments made on their behalf when, in fact, no such investments had been made and their money had, instead, been misappropriated for other purposes. Two of the investment opportunities Goren purported to offer were: (1) money-market funds that were entirely fictitious (the “Fictitious New Age Funds”); and (2) mutual funds that were entirely real, such as those offered by The Vanguard Group and Putnam Investments (the “Real

(f) The Trustee's determination is inconsistent with the case law. The Second Circuit's discussion of SIPC's claims processing in *New Times*, the only case in this jurisdiction dealing with the issue in the Madoff case, further indicates that, with respect to customers who thought they were invested in listed securities, SIPC properly paid customer claims based on the customers' final account statements, even where the securities had never been purchased:

Meanwhile, investors who were misled . . . to believe that they were investing in mutual funds that in reality existed were treated much more favorably. Although they were not actually invested in those real funds – because Goren never executed the transactions – the information that these claimants received on their account statements mirrored what would have happened had the given transaction been executed. As a result, the Trustee deemed those customers' claims to be "securities claims" eligible to receive up to \$500,000 in SIPC advances. The Trustee indicates that this disparate treatment was justified because he could purchase real, existing securities to satisfy such securities claims. Furthermore, the Trustee notes that, if they were checking on their mutual funds, the "securities claimants," . . . could have confirmed the existence of those funds and tracked the funds' performance against Goren's account statements.

In re New Times Secs. Servs., 371 F.3d 68, 74 (2d Cir. 2004); *see also* Brief of Appellant SIPC at 23-24, *In re New Times Sec. Servs., Inc.*, No. 05-5527 (Dec. 30, 2005):

"[R]easonable and legitimate claimant expectations on the filing date are controlling even where inconsistent with transactional reality. Thus, for example, where a claimant orders a securities purchase and receives a written confirmation statement reflecting that purchase, the claimant generally has a reasonable expectation that he or she holds the securities identified in the confirmation

Securities"). *See In re New Times Sec. Services, Inc.*, 371 F.3d 68, 71-72 (2d Cir. 2004) ("*New Times P*"). Goren's was "a classic Ponzi scheme," *Id.* at 72 n.2, wherein new investors' money was used to pay earlier investors.

Approximately 900 customers filed claims in the New Times liquidation: 726 for whom the "Real Securities" were purportedly purchased; 174 for whom the "Fictitious New Age Funds" were purportedly purchased. Consistent with SIPA and its legislative history, the New Times Trustee appropriately applied SIPA's net equity definition to the "Real Securities" customers' claims – meaning he paid them according to the full value of those securities positions as of the date of the liquidation filing. When challenged by "Fictitious New Age Funds" customers who had objected that they had not received the same treatment, SIPC and the New Times Trustee (with the apparent concurrence of the SEC) vigorously defended their approach in court.

and therefore generally is entitled to recover those securities (within the limits imposed by SIPA), even where the purchase never actually occurred and the debtor instead converted the cash deposited by the claimant to fund that purchase. . . . [T]his emphasis on reasonable and legitimate claimant expectations frequently yields much greater ‘customer’ protection than would be the case if transactional reality, not claimant expectations, were controlling, as this Court’s earlier opinion in this liquidation well illustrates.”

The Manns are in the same position as those investors in the *New Times* case who received confirmations and statements reflecting real securities.

(g) The Trustee’s position in the Madoff case is contradicted, not only by SIPC’s prior treatment of customers in the *New Times* case, but also by a statement that SIPC’s general counsel, Josephine Wang, gave to the press on December 16, 2008 wherein Ms. Wang acknowledged that a Madoff customer is entitled to the securities in their account:

Based on a conversation with the SIPC general counsel, Josephine Wang, if clients were presented statements and had reason to believe that the securities were in fact owned, the SIPC will be required to buy these securities in the open market to make the customer whole up to \$500K each. So if Madoff client number 1234 was given a statement showing they owned 1000 GOOG shares, even if a transaction never took place, the SIPC has to buy and replace the 1000 GOOG shares.

December 16, 2008 Insiders’ Blog, www.occ.treas.gov/ftp/alert/2008-37.html.

(h) The Trustee’s methodology also conflicts with other federal laws. For example, Rev. Proc.2009-20, issued by Commissioner Shulman on March 17, 2009, expressly recognizes the income earned by customers, on which they paid taxes annually. Yet the Trustee’s position is that the income earned by customers on their investments is not their money. In addition, some customers were required to take distribution from their retirement accounts. Yet the Trustee is deducting from their customer claim the mandatory withdrawals that the customers were required by law to take.

18. In sum, the Trustee has created his own definition of “net equity” that is not based on statutes prior practice, or case law. The procedure is designed not for the benefit of Madoff victims but rather so that the Trustee can avoid paying SIPC insurance to the thousands of Madoff investors who, like the Manns, have depended upon their Madoff investments for their current and future living expenses.

19. Because of his refusal to comply with SIPA’s mandate that he “promptly” satisfy customer claims based on their last statements (their “Statutory Balances”), 15 U.S.C. § 78fff-3(a) and 4(c), the Trustee employs a vast team of forensic accountants to pore through decades of records to determine each customer’s net investment before SIPC pays any amount to a customer. Clearly, this is inconsistent with the statutory scheme and the legislative intent. The Manns’ “securities position” are readily ascertainable from their Final Madoff Statement.

V. THE TRUSTEE HAS NO LEGAL BASIS FOR REDUCING THE CLAIM

20. The Trustee’s action in reducing the amount shown on the Mann Customer Claim by any prior gains or withdrawals reflected on the Final Madoff Statement or prior statements is an attempt to avoid such gains without alleging any grounds for avoidance or proving that such gains are avoidable under the Bankruptcy Code’s avoidance provisions. Any such disallowance is improper and unjustified, and the Determination Letter should be stricken on that ground alone. *See* Fed. R. Bankr. P. 7001(1); 7008.

VI. THE TRUSTEE’S REDUCTIONS ARE BARRED BY THE STATUE OF LIMITATIONS

21. The Trustee’s action in reducing the amount shown on the Mann Customer Claim by gains or withdrawals from the account is an attempt to avoid such gains and withdrawals without alleging any grounds for avoidance or proving that such gains are avoidable under the state law avoidance provisions or other theories of law. The avoidance of those gains and

withdrawals have been taken well beyond any limitations period for avoidance of a claim under either state or federal law.

VII. THE TRUSTEE'S DENIAL IS INCONSISTENT WITH SIPC

22. SIPA provides that (a) SIPC shall pay the first \$500,000 of each customer claim, and (b) customers have an unsecured claim against customer property for the balance of their claims which is paid pro rata with other customers. *See* 15 U.S.C. § 78fff-3(a) (“In order to provide for prompt payment and satisfaction of net equity claims of customers of debtor, SIPC shall advance to the trustee [up to] \$500,000 for each customer, as may be required to pay . . . claims.”); 15 U.S.C. § 78fff-2(c)(1)(B) (providing that customers of the debtor “shall share ratably in . . . customer property on the basis and to the extent of their net equities”). The Manns are entitled to an advance of \$500,000 and a claim against customer property for the remainder.

VIII. THE MANNS ARE ENTITLED TO INTEREST ON THEIR INVESTMENTS

23. In the event that the Court should determine that customer claims should not be allowed in the amount of the Final Madoff Statement, then in the alternative, the Manns are entitled to recover interest or appreciation the investments based upon the following.

(i) Under New York law, which is applicable here, funds deposited with the Debtors under these circumstances are entitled to interest. *See, e.g.,* N.Y.C.P.L.R. § 5004; N.Y. Gen. Oblig. § 5-501, et seq. Accordingly, the Mann Customer Claim should be recalculated by adding interest to all funds deposited.

(j) Under New York law, which is applicable here, customers are entitled to any returns Madoff earned on the deposited funds under principles of unjust enrichment. Accordingly, Customer claims should be recalculated by adding the amounts earned by BMIS on the customer's deposits. *See, e.g., Steinberg v. Sherman*, No. 07-1001, 2008 U.S. Dist. LEXIS 35786, at *14-15 (S.D.N.Y. May 2, 2008) (“Causes of action such as . . . conversion

and unjust enrichment qualify for the recovery of prejudgment interest.”); *Eighteen Holding Corp. v. Drizin*, 701 N.Y.S.2d 427, 428 (1st Dep’t 2000) (awarding prejudgment interest on claims for unjust enrichment and conversion).

(c) The Manns are entitled to interest on their investment under federal securities laws. In *Randall v. Loftsgaarden*, 478 U.S. 647 (1986), the Supreme Court analyzed the different measures of recovery of “actual damages” for fraud, primarily including rescission and restitution. The *Randall* Court concluded that Congress intended to deter wrongdoers, and hence, that wide latitude in choosing the measure of damages was warranted. *See id.* at 664 (citing *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 151, 92 S.Ct. 1456, 31 L.Ed.2d 741 (1972)). The *Randall* Court continued by holding that:

This deterrent purpose is ill-served by a too rigid insistence on limiting plaintiffs to recovery of their “net economic loss.”

Id. at 664 (citing *Salcer v. Envicon Equities Corp.*, 744 F.2d 935, 940 (2d Cir. 1984)).

RESERVATION OF RIGHTS

24. The Manns reserve the right to revise, supplement, or amend this Objection, and any failure to object on a particular ground or grounds shall not be construed as a waiver of the Manns right to object on any additional grounds.

25. The Manns reserve all rights set forth in Rule 9014, including, without limitation, rights of discovery. See Fed. R. Bankr. P. 9014.

26. The Manns reserve all objections as to the competence, relevance, materiality, privilege, or admissibility of evidence in any subsequent proceeding or trial of this or any other action for any purpose whatsoever.

27. The Manns incorporate by reference all reservations of rights set forth in the Mann Customer Claim.

RELIEF REQUESTED

For the reasons stated herein, the Mann Customer Claim should be allowed in its entirety in the amount of \$7,192,467.45, which is the amount stated on their Final Madoff Statement, plus interest from the date of the Determination Letter.

For the reasons stated herein, this Court should direct SIPC to immediately replace \$500,000 of the securities in the Mann Account based upon the values reflected on their November 30, 2008 account statement.

For the reasons stated herein, the Determination Letter should be stricken.

The Manns request such other relief as may be just and equitable.

Dated: September 25, 2009

SONNENSCHN NATH & ROSENTHAL LLP

By: /s/ Carole Neville
Carole Neville
1221 Avenue of the Americas
New York, New York 10020
Telephone: (212) 768-6700
Facsimile: (212) 768-6800

Attorneys for Michael Mann and Meryl Mann

CERTIFICATE OF SERVICE

I, Carole Neville, hereby certify that on September 25, 2009 I caused a true and correct copy of the foregoing **Objection to Trustee's Determination of Claim** on behalf of Michael Mann and Meryl Mann to be filed electronically with the Court and served upon the parties in this action who receive electronic service through CM/ECF, and served by hand upon:

David J. Sheehan, Esq.
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111

Dated: September 25, 2009

/s/ Carole Neville
Carole Neville

EXHIBIT A

COPY

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008¹

NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM

August 28, 2009

Michael Mann and Meryl Mann J/T WROS
[REDACTED]
[REDACTED]

Dear Mr. and Mrs. Mann:

PLEASE READ THIS NOTICE CAREFULLY.

The liquidation of the business of BERNARD L. MADOFF INVESTMENT SECURITIES LLC ("BLMIS") is being conducted by Irving H. Picard, Trustee under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. ("SIPA"), pursuant to an order entered on December 15, 2008 by the United States District Court for the Southern District of New York.

The Trustee has made the following determination regarding your claim on BLMIS Account No. 1CM363 designated as Claim Number 009823:

Your claim for securities is **DENIED**. No securities were ever purchased for your account.

Further, based on the Trustee's analysis, the amount of money you withdrew from your account at BLMIS (total of \$22,150,000.00), as more fully set forth in Table 1 annexed hereto and made a part hereof, is greater than the amount that was deposited with BLMIS for the purchase of securities (total of \$16,350,000.00). As noted, no securities were ever purchased by BLMIS for your account.

¹ Section 78111(7)(B) of SIPA states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." Section 78111(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

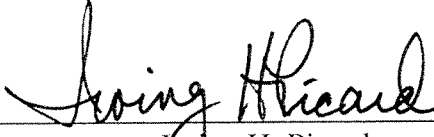
PLEASE TAKE FURTHER NOTICE: If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination with respect to your claim being confirmed by the Court and binding on you.

PLEASE TAKE FURTHER NOTICE: You must mail your opposition, if any, in accordance with the above procedure, to each of the following addresses:

Clerk of the United States Bankruptcy Court for
the Southern District of New York
One Bowling Green
New York, New York 10004

and

Irving H. Picard, Trustee
c/o Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10011



Irving H. Picard

Trustee for the Liquidation of the Business of
Bernard L. Madoff Investment Securities LLC

Cc: Carole Neville
Sonnenschein Nath & Rosenthal LLP
1221 Avenue of the Americas
25th Floor
New York, New York 10020

- Table 1 -		
DEPOSITS		
DATE	TRANSACTION DESCRIPTION	AMOUNT
1/2/1996	CHECK	\$1,500,000.00
12/17/1996	CHECK	\$1,000,000.00
12/23/1997	CHECK	\$1,500,000.00
12/31/1997	CHECK	\$1,500,000.00
12/22/1998	CHECK	\$250,000.00
12/23/1999	CHECK	\$1,000,000.00
5/24/2000	CHECK	\$2,000,000.00
12/18/2000	CHECK WIRE	\$6,000,000.00
12/21/2001	CHECK	\$100,000.00
1/5/2007	CHECK WIRE	\$1,500,000.00
Total Deposits:		\$16,350,000.00
WITHDRAWALS		
DATE	TRANSACTION DESCRIPTION	AMOUNT
12/30/1997	CHECK RETURNED	(\$1,500,000.00)
11/7/2000	CHECK WIRE	(\$7,500,000.00)
4/16/2003	CHECK	(\$400,000.00)
2/23/2004	CHECK WIRE	(\$4,000,000.00)
12/16/2004	CHECK	(\$2,000,000.00)
12/15/2005	CHECK WIRE	(\$4,000,000.00)
3/20/2006	CHECK	(\$500,000.00)
3/7/2007	CHECK	(\$250,000.00)
10/24/2007	CHECK	(\$2,000,000.00)
Total Withdrawals:		(\$22,150,000.00)
Total deposits less withdrawals:		(\$5,800,000.00)

EXHIBIT B

COPY

CUSTOMER CLAIM

Claim Number _____

Date Received _____

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

RECEIVED
JUN 17 2009

Irving H. Picard, Esq.
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

Provide your office and home telephone no.

OFFICE: (212) 768-6889 _____

HOME: _____

Account Number: 1-CM363-3 & 1-CM363-4

Taxpayer I.D. Number (Social Security No.)

Michael Mann and Meryl Mann J/T WROS

[REDACTED]

(If incorrect, please change)

NOTE: BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET. A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT AND, TO RECEIVE THE FULL PROTECTION AFFORDED UNDER SIPA, ALL CUSTOMER CLAIMS MUST BE RECEIVED BY THE TRUSTEE ON OR BEFORE March 4, 2009. CLAIMS RECEIVED AFTER THAT DATE, BUT ON OR BEFORE July 2, 2009, WILL BE SUBJECT TO DELAYED PROCESSING AND TO BEING SATISFIED ON TERMS LESS FAVORABLE TO THE CLAIMANT. PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED.

1. Claim for money balances as of **December 11, 2008**:
 - a. The Broker owes me a Credit (Cr.) Balance of \$ _____
 - b. I owe the Broker a Debit (Dr.) Balance of \$ _____

c. If you wish to repay the Debit Balance, please insert the amount you wish to repay and attach a check payable to "Irving H. Picard, Esq., Trustee for Bernard L. Madoff Investment Securities LLC."

If you wish to make a payment, it must be enclosed

with this claim form.

\$ _____

d. If balance is zero, insert "None."

NONE

2. Claim for securities as of **December 11, 2008**:

PLEASE DO NOT CLAIM ANY SECURITIES YOU HAVE IN YOUR POSSESSION.

	YES	NO
a. The Broker owes me securities	✓	
b. I owe the Broker securities		✓
c. If yes to either, please list below:		

		Number of Shares or Face Amount of Bonds	
Date of Transaction (trade date)	Name of Security	The Broker Owes Me (Long)	I Owe the Broker (Short)
SEE STATEMENT DATED NOVEMBER 30, 2008		✓	

Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or

information regarding any withdrawals you have ever made or payments received from the Debtor.

Please explain any differences between the securities or cash claimed and the cash balance and securities positions on your last account statement. If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please be sure to provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

PLEASE CHECK THE APPROPRIATE ANSWER FOR ITEMS 3 THROUGH 9.

NOTE: IF "YES" IS MARKED ON ANY ITEM, PROVIDE A DETAILED EXPLANATION ON A SIGNED ATTACHMENT. IF SUFFICIENT DETAILS ARE NOT PROVIDED, THIS CLAIM FORM WILL BE RETURNED FOR YOUR COMPLETION.

	<u>YES</u>	<u>NO</u>
3. Has there been any change in your account since December 11, 2008? If so, please explain.	_____	_____✓
4. Are you or were you a director, officer, partner, shareholder, lender to or capital contributor of the broker?	_____	_____✓
5. Are or were you a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the broker?	_____	_____✓
6. Are you related to, or do you have any business venture with, any of the persons specified in "4" above, or any employee or other person associated in any way with the broker? If so, give name(s)	_____	_____✓
7. Is this claim being filed by or on behalf of a broker or dealer or a bank? If so, provide documentation with respect to each public customer on whose behalf you are claiming.	_____	_____✓
8. Have you ever given any discretionary authority to any person to execute securities transactions with or through the broker on your behalf? Give names, addresses and phone numbers.	_____	_____✓

9. Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? if so, give name of that broker. _____ ✓

Please list the full name and address of anyone assisting you in the preparation of this claim form: Carole Neville, Sonnenschein Nath & Rosenthal LLP, 1221 Avenue of the Americas, 25th Floor, New York, NY 10020.

If you cannot compute the amount of your claim, you may file an estimated claim. In that case, please indicate your claim is an estimated claim.

IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM. CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN \$50,000 OR IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR BOTH.

THE FOREGOING CLAIM IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION AND BELIEF. *

Date 6/16/09 Signature Carl C...
Date 6/16/09 Signature Thyl Mann

(If ownership of the account is shared, all must sign above. Give each owner's name, address, phone number, and extent of ownership on a signed separate sheet. If other than a personal account, e.g., corporate, trustee, custodian, etc., also state your capacity and authority. Please supply the trust agreement or other proof of authority.)

This customer claim form must be completed and mailed promptly, together with supporting documentation, etc. to:

Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

* This form includes and incorporates in full the attached Addendum. Customer reserves the right to amend the claim for any purpose, including without limitation, to add interest, costs and other losses associated with this account.

ADDENDUM

Customer: Michael Mann and
Meryl Mann J/T WROS

Address: 

Account #: 1-CM363-3
1-CM363-4

November 30, 2008 Statement – Closing balance net equity \$7,192,467.45

Affiliated with
Madoff Securities International Limited
12 Berkeley Street
Mayfair, London W1J 8DT
Tel 020 7493 6222

885 Third Avenue
New York, NY 10022
(212) 230-2424
800 334-1343
Fax (212) 838-4061

BERNARD L. MADOFF
INVESTMENT SECURITIES LLC
New York ☐ London

MICHAEL MANN
AND **MERYL MANN J/T WROS**

PERIOD ENDING
11/30/08

YOUR ACCOUNT NUMBER
1-CM363-3-0

YOUR TAX PAYER IDENTIFICATION NUMBER
[REDACTED]

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DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRIN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/12	4,030		2388	BALANCE FORWARD		431,396.93	
11/12	2,635		2890	WAL-MART STORES INC	55.830	225,155.90	
11/12	9,765		6714	INTERNATIONAL BUSINESS MACHS	87.270	230,061.45	
11/12	10,695		7216	EXXON MOBIL CORP	72.880	712,063.20	
11/12	5,115		11542	INTEL CORP	14.510	155,611.45	
11/12	6,975		15868	JOHNSON & JOHNSON	59.580	304,955.70	
11/12	3,720		20193	J-P. MORGAN CHASE & CO	38.530	269,025.75	
11/12	2,170		24519	COCA COLA CO	44.660	166,283.20	
11/12	4,030		28845	MCDONALDS CORP	55.370	120,238.90	
11/12	14,725		35171	MERCK & CO	28.550	115,217.50	
11/12	7,440		37497	MICROSOFT CORP	21.810	321,741.25	
11/12	2,945		50475	ORACLE CORPORATION	17.300	129,009.00	
11/12	1,705		50977	PEPSICO INC	56.410	166,244.45	
11/12	12,555		54801	APPLE INC	100.780	171,897.90	
11/12	2,945		55303	Pfizer Inc	16.940	213,183.70	
11/12	5,580		59127	ABBOTT LABORATORIES	54.610	160,943.45	
11/12	2,015		59629	PROCTER & GAMBLE CO	64.080	357,789.40	
11/12	3,875		63453	ANGEN INC	59.160	119,287.40	
11/12	9,300		63955	PHILLIP MORRIS INTERNATIONAL	43.600	169,105.00	
11/12	3,100		67779	BANK OF AMERICA	21.590	201,159.00	
11/12	10,075		68281	QUALCOMM INC	33.770	104,811.00	
11/12	2,325		72105	CITI GROUP INC	12.510	126,441.25	
11/12	5,580		72607	SCHLUMBERGER LTD	49.480	115,134.00	
				COMCAST CORP	16.510	92,348.80	
				CL A			
				CONTINUED ON PAGE 2			

Affiliated with
Madoff Securities International Limited
12 Berkeley Street
Mayfair, London W1J 8DT
Tel 020 7493 6222

885 Third Avenue
New York, NY 10022
(212) 230-2424
800 334-1343
Fax (212) 838-4061

BERNARD L. MADOFF
INVESTMENT SECURITIES LLC
New York ☐ London

MICHAEL MANN
AND MERYL MANN J/T WROS

YOUR ACCOUNT NUMBER
1-CM363-3-0

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11/30/08

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YOUR TAX PAYER IDENTIFICATION NUMBER
[REDACTED]

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/12	11,005		76431	AT&T INC	27	297,575.00	
11/12	2,790		76933	CONOCOPHILIPS	52.510	146,613.90	
11/12	1,860		80757	UNITED PARCEL SVC INC CLASS B	52.040	96,868.40	
11/12	11,315		81259	CISCO SYSTEMS INC	16.730	189,751.95	
11/12	3,255		85083	U S BANCORP	29.530	96,250.15	
11/12	3,875		85585	CHEVRON CORP	73.430	284,696.25	
11/12	1,860		89409	UNITED TECHNOLOGIES CORP	53.160	98,951.60	
11/12	19,685		89911	GENERAL ELECTRIC CO	19.630	387,203.55	
11/12	5,270		93735	VERIZON COMMUNICATIONS	30.410	160,470.70	
11/12	465		94237	GOOGLE	337.400	156,909.00	
11/12	6,510		98061	WELLS FARGO & CO NEW	29.800	194,258.00	
11/12	4,650		98563	HEWLETT PACKARD CO	34.900	162,471.00	
11/12		50,000	19771	U S TREASURY BILL DUE 12/18/2008	99.942		49,971.00
11/12		6,975,000	20674	U S TREASURY BILL DUE 2/12/2009	99.936		6,970,536.00
11/12				FIDELITY SPARTAN U S TREASURY MONEY MARKET DIV 11/12/08	DIV		30.49
11/12		34,751	15772	FIDELITY SPARTAN U S TREASURY MONEY MARKET	1		34,751.00
11/12	4,250		25141	FIDELITY SPARTAN U S TREASURY MONEY MARKET	1	4,250.00	
				CONTINUED ON PAGE 3			

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BERNARD L. MADOFF
INVESTMENT SECURITIES LLC
New York □ London

MICHAEL MANN
AND **MERYL MANN J/T WROS**

PERIOD ENDING
11/30/08

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YOUR ACCOUNT NUMBER
1-CM363-3-0

YOUR TAX PAYER IDENTIFICATION NUMBER
[REDACTED]

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/19				FIDELITY SPARTAN U S TREASURY MONEY MARKET DIV 11/19/08	DIV		.52
11/19		4,250	50401	FIDELITY SPARTAN U S TREASURY MONEY MARKET	1	449,667.00	4,250.00
11/19	450,000		55036	U S TREASURY BILL DUE 03/26/2009	99-926		
11/19	18,963		59441	FIDELITY SPARTAN U S TREASURY MONEY MARKET	1	18,963.00	
				NEW BALANCE		864,466.07	
	11,005 2,945 2,015 1,705 9,300 3,875 11,315 10,075 3,720 5,580			SECURITY POSITIONS AT&T INC ABBOTT LABORATORIES ANGEN INC APPLE INC BANK OF AMERICA CHEVRON CORP CISCO SYSTEMS INC CITI GROUP INC COCA COLA CO COMCAST CORP CL A	MKT PRICE 28.560 52.390 55.540 92.670 16.250 79.010 16.540 8.290 46.870 17.340		
				CONTINUED ON PAGE 4			

Artimated with
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INVESTMENT SECURITIES LLC
New York ☐ London

MICHAEL MANN
AND MERYL MANN J/T WROS

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YOUR ACCOUNT NUMBER
1-CM363-3-0

YOUR TAX PAYER IDENTIFICATION NUMBER
[REDACTED]

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
	2,790 9,765 19,685 465 4,650 10,695 2,635 6,975 5,115 2,170 4,030 14,725 7,440 2,945 12,555 3,875 5,580 3,100 2,325 18,963			CONOCOPHILIPS EXXON MOBIL CORP GENERAL ELECTRIC CO GOOGLE HEWLETT PACKARD CO INTEL CORP INTERNATIONAL BUSINESS MACHS J.P. MORGAN CHASE & CO JOHNSON & JOHNSON MCDONALDS CORP MERCK & CO MICROSOFT CORP ORACLE CORPORATION PEPSICO INC PFIZER INC PHILLIP MORRIS INTERNATIONAL PROCTER & GAMBLE CO QUALCOMM INC SCHLUMBERGER LTD FIDELITY SPARTAN U S TREASURY MONEY MARKET U S BANCORP UNITED PARCEL SVC INC CLASS B U S TREASURY BILL DUE 03/26/2009 3/26/2009	52.520 80.150 17.170 292.960 35.280 13.800 81.600 31.660 58.580 58.750 26.720 20.220 16.090 56.700 16.430 42.160 64.350 33.570 50.740 1 26.980 57.600 99.971		

CONTINUED ON PAGE 5

BERNARD L. MADOFF
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800 334-1343
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MICHAEL MANN
AND **MERYL MANN J/T WROS**

PERIOD ENDING
11/30/08

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YOUR ACCOUNT NUMBER
1-CM363-3-0

YOUR TAX PAYER IDENTIFICATION NUMBER
[REDACTED]

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
	1,860 5,270 4,030 6,510			UNITED TECHNOLOGIES CORP VERIZON COMMUNICATIONS WAL-MART STORES INC WELLS FARGO & CO NEW MARKET VALUE OF SECURITIES LONG 7,297,867.45 <i>105 Year</i> <i>71 92467.45</i>	48.530 32.650 55.880 28.890		

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MICHAEL MANN
AND **MERYL MANN J/T WROS**

PERIOD ENDING
11/30/08

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YOUR ACCOUNT NUMBER
1-CM363-3-0

YOUR TAX PAYER IDENTIFICATION NUMBER
[REDACTED]

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRIN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
				YEAR-TO-DATE SUMMARY DIVIDENDS GROSS PROCEEDS FROM SALES			48,072-01 40,592,994.93

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PERIOD ENDING
11/30/08

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YOUR ACCOUNT NUMBER
1-CM363-4-0

YOUR TAX PAYER IDENTIFICATION NUMBER
[REDACTED]

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/12		155	41823	BALANCE FORWARD			431,397.00
11/12	155		46149	S & P 100 INDEX NOVEMBER 460 CALL	15.800		244,745.00
11/19		155	32254	S & P 100 INDEX NOVEMBER 450 PUT	17.800	276,055.00	
11/19	155		36579	S & P 100 INDEX DECEMBER 430 CALL	26		402,845.00
11/19	155		40904	S & P 100 INDEX DECEMBER 420 PUT	30	465,155.00	
11/19		155	45229	S & P 100 INDEX NOVEMBER 460 CALL	3	46,655.00	
				S & P 100 INDEX NOVEMBER 450 PUT	37		573,345.00
				NEW BALANCE			864,467.00
				SECURITY POSITIONS			
		155		S & P 100 INDEX DECEMBER 430 CALL	MKT PRICE 23.300		
				S & P 100 INDEX DECEMBER 420 PUT	16.500		
				MARKET VALUE OF SECURITIES			
				LONG			
				255,750.00			
				SHORT			
				361,150.00			
				255,750			
				101.45			

SONNENSCHN NATH & ROSENTHAL LLP
Carole Neville
1221 Avenue of the Americas
New York, New York 10020
Telephone: (212) 768-6700
Facsimile: (212) 768-6800
cneville@sonnenschein.com

Attorneys for BAM LP

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM

BAM LP, hereby objects to the Notice of Trustee's Determination of Claim dated October 19, 2009 ("Determination Letter"), attached hereto as Exhibit A, as described herein.

BACKGROUND

1. In or about March 1999, BAM LP opened an account (Account No. 1-CM579-3 and 1-CM579-4) with Bernard L. Madoff Investment Securities LLC ("Madoff") in the name of BAM LP (the "BAM LP Customer Account").¹ BAM LP is a "customer" of Madoff, as defined by the Securities Investor Protection Act ("SIPA").

2. From the creation of the BAM LP Customer Account, BAM LP received regular communications from Madoff, including monthly statements, trade confirmations, and quarterly portfolio management reports.

¹ All personal information relating to the BAM LP Customer Account has been redacted for security reasons.

3. The final Madoff statement dated November 30, 2008 (the “Final Madoff Statement”) for the BAM LP Customer Account shows that BAM LP owned securities with a market value of \$714,333.85 in the BAM LP Customer Account. A copy of the Final Madoff Statement is annexed to the BAM LP Customer Claim (defined below).

4. On December 11, 2008, an action was commenced against Madoff by the Securities & Exchange Commission in the United States District Court for the Southern District of New York. On December 15, 2008, this liquidation proceeding was commenced pursuant to the SIPA. *See* Order, Securities and Exchange Commission v. Madoff, No. 08-10791 (S.D.N.Y. Dec. 15, 2008) (ordering relief under SIPA and transferring proceeding to the United States Bankruptcy Court for the Southern District of New York) [Dkt. No. 4]. Irving Picard was appointed Trustee (“Trustee”), charged, *inter alia*, with overseeing the liquidation of Madoff and processing customer claims for money pursuant to SIPA. *Id.*; 15 U.S.C. § 78fff-1(a).

5. On December 23, 2008, the Court issued an Order directing the Trustee to disseminate notice and claim forms to Madoff customers and setting forth claim-filing deadlines. *See* Order [Dkt. No. 12].

6. The December 23, 2008 Order further provided that, to the extent the Madoff Trustee disagrees with the amount set forth on a customer claim form, the Madoff Trustee “shall notify such claimant by mail of their determination that the claim is disallowed, in whole or in part, **and the reason therefor** . . .” *See* Order at 6 (emphasis added) [Dkt. No. 12].

7. On or about June 17, 2009, BAM LP timely filed a claim for the BAM LP Customer Account for securities (the “BAM LP Customer Claim”) based on the November 30, 2008 Final Madoff Statement in the amount of \$714,333.85. A copy of the BAM LP Customer Claim with the Final Madoff Statement is attached hereto as Exhibit B.

8. On October 19, 2009, the Trustee sent BAM LP the Determination Letter rejecting the BAM LP Customer Claim and stating that BAM LP is not entitled to a payment because (a) no securities were purchased for the BAM LP Customer Account and (b) the BAM LP Customer Account does not have a positive net equity because more funds had been withdrawn than deposited into the account.

GROUND FOR OBJECTION

I. The Determination Letter Fails To Comply With The Court's Order.

9. The Determination Letter fails to comply with this Court's December 23, 2008 Order, which directs the Trustee to satisfy customer claims in accordance "with the Debtor's books and records." Dec. 23, 2008 Order at 5 [Dkt. No. 12]. The BAM LP Customer Claim was evidenced by the Final Madoff Statement showing a value of \$714,333.85 and listing the securities purportedly purchased for the account, which reflects the "Debtor's books and records" and by which the Trustee is bound absent proof that the owner of the BAM LP Customer Account did not have a "legitimate expectation" that the balance on the Final Madoff Statement, confirmations, credit advices and portfolio management report represented its property.

II. The Trustee Does Not Set Forth the Legal Basis for Disallowing the Claim in Full.

10. The Trustee failed to set forth a legal basis for the position he has taken for the calculation of the claim. *See* Determination Letter. The Determination Letter:

(a) does not clearly provide "the reason" for the disallowance, as required by the Court's December 23, 2008 Order, *see* Order [Dkt. No. 12];

(b) is insufficient to rebut the prima facie validity of the BAM LP Customer Claim as provided in Section 502(a) of the Bankruptcy Code and Fed. R. Bankr. P. 3001(f);

(c) violates general principles of applicable law requiring that an objection to a proof of claim set forth, at a minimum, the relevant facts and legal theories upon which the objection is based, *see, e.g.*, Collier on Bankruptcy ¶ 3007.01(3) (15th ed.) (“an objection to a claim should . . . meet the [pleading] standards of an answer”); *In re Enron Corp.*, No. 01-16034, 2003 Bankr. LEXIS 2261, at *25 (Bankr. S.D.N.Y. Jan. 13, 2003) (same); and

(d) includes an exhibit, which purportedly calculates the money deposited less subsequent withdrawals without any supporting documentation, that is completely unsubstantiated and incorrect. To the extent that the Trustee’s “reconciliation” differs from the BAM LP Customer Claim, the Trustee should produce evidence supporting his “reconciliation.”

III. The Trustee Has Failed to Honor Customer Expectation.

11. The Trustee has failed to fulfill the requirement that he honor the legitimate expectations of a customer.

12. The legislative history of SIPA makes clear that Congress’ intent in enacting the legislation was to protect the legitimate expectations of customers. Congressman Robert Eckhardt, (D) Texas, sponsor of amendments to SIPA to increase the amount of advance available to customers and expedite the process, commented on the purpose of the legislation as follows:

Under present law, because securities belonging to customers may have been lost, improperly hypothecated, misappropriated, *never purchased* or even stolen, it is not always possible to provide to customers that which they expect to receive, that is, securities which they maintained in their brokerage account . . . By seeking to make customer accounts whole and returning them to customers in the form they existed on the filing date, the amendments . . . would satisfy the customers’ legitimate expectations . . .

S. Rep. No. 95-763, at 2 (1978) (*emphasis added*).

A customer generally expects to receive *what he believes* is in his account at the time the stockbroker ceases business. But because securities may have been lost, improperly hypothecated, misappropriated, *never purchased*, or even stolen, it is not always possible to provide to customers that which they expect to receive, that is, securities which they maintained in their brokerage account . . . By seeking to make customer accounts whole and returning them to customers in the form they existed on the filing date, the amendments . . . would satisfy customers' legitimate expectations . . .

S. Rep. No. 95-763, at 2 (1978) (emphasis added).

13. The Securities Investor Protection Corporation ("SIPC"), charged with administering SIPA, acknowledged that it was bound by the statute and the rules to satisfy the reasonable expectations of customers even when the securities had never been purchased, in the brief it submitted to the Court of Appeals for the Second Circuit as follows:

Reasonable and legitimate expectations on the filing date are controlling even where inconsistent with transaction reality. Thus, for example, where a claimant orders a securities purchase and receives a written confirmation statement reflecting that purchase, the claimant generally has a reasonable expectation that he or she holds the securities identified in the confirmation and therefore generally is entitled to recover those securities (within the limits of SIPA) even where the purchase never actually occurred and the debtor instead converted the cash deposited by the claimant to fund that purchase . . . [T]his emphasis on the reasonable and legitimate customer expectations frequently yields much greater customer protection than would be the case if the transaction reality, not the claimants expectations, were controlling, as this court's earlier opinion in this liquidation well illustrates.

Brief of the Appellant SIPC at 23-24.

14. Based on regular statements, confirmation reports and other communications received from Madoff, BAM LP, at all times reasonably believed and expected that Madoff executed such transactions and that the BAM LP Customer Account actually held such securities.

15. The Trustee's position in the Madoff case is completely inconsistent with the purpose and goals of SIPA and the position that SIPC has taken unequivocally with respect to the treatment of customers in accordance with their reasonable expectations reflected in the communications from the broker-dealer.

IV. The Trustee's Definition of "Net Equity" is Inconsistent With SIPA and SIPA Rules, Practice and Pronouncement and Case Law Interpreting the Statute and Rules.

16. The Trustee failed to set forth a legal basis for the position he has taken that he can reduce the amount of the claim by appreciation in the BAM LP Customer Account or calculate the claim by counting only investment principal less withdrawals without regard to the securities reflected in the Final Madoff Statement. No legal basis for the method exists. The Trustee's calculation violates SIPA.

17. 15 U.S.C. § 78fff-2(b) provides that a customer's claim shall be allowed in the amount of the customer's "net equity." 15 U.S.C. § 78fff-2(b). The Trustee calculates "net equity" by reducing the principal contributed to the account less any withdrawals or appreciation, without regard to any gains reflected in the Final Madoff Statement and any prior statement delivered by Madoff to the customer. This is incorrect for the following reasons:

(a) The Trustee's method of calculating the customer claim is inconsistent with the language of the statute. SIPA defines a customer's net equity claim as the value of the customer's "securities positions" in the customer's account, less any amount the customer owes the debtor, as of the date of the filing of the SIPA liquidation:

The term 'net equity' means the dollar amount of the account or accounts of a customer, to be determined by –

(A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date, all securities positions of such customer . . . ; minus

(B) any indebtedness of such customer to the debtor on the filing date . . .²

15 U.S.C. § 7811(11). The Trustee’s proposed formulation has no support in the language of the statute or interpreting case law and in fact, adds words and concepts to the statute which do not exist.

(b) The Trustee’s method is inconsistent with the Rules promulgated under SIPA. The Series 500 Rules promulgated under SIPA by SIPC provide for the classification of claims for cash or securities in accordance with the written transaction confirmations sent by the broker-dealer to the customer. 17 C.F.R. § 300.500. Pursuant to the Rule, a customer has a claim for securities if the customer has received written confirmation that the securities have been purchased or sold for the account.

(c) The Trustee’s method is inconsistent with the legislative history of the statute. SIPA’s legislative history emphasizes Congress’ intention that the statute protect customer expectations by ensuring that customers of retail brokerage firms can rely on their account statements. The Madoff statements and confirmations sent to BAM LP indicated that it owned a list of blue chip securities. It makes no difference whether the securities were ever actually purchased.

(d) The Trustee’s formula is an improper and wholly inadequate measure of loss. BAM LP deposited funds with Madoff with the expectation the amount would grow—the BAM LP Customer Account statements showed such growth, and the balance on the

² The “indebtedness” of the customer to the debtor refers to cash or securities owed to the debtor, which is most often in the context of a customer having borrowed from the debtor on margin. *See, e.g.*, H.R. Rep. No. 95-746 at 21 (1977) (describing customers owing cash or securities to the stockbroker as “margin customers”); *Rich v. NYSE*, 522 F.2d 153, 156 (2d Cir. 1975) (noting that, under the 1970 statutory regime, when there were shortages in available securities to satisfy “net equity” claims, customers received cash for their securities “less, in the case of holders of margin accounts, amounts owed” to the broker); *In re First St. Sec. Corp.*, 34 B.R. 492, 497 (Bankr. S.D. Fla. 1983) (offsetting against claim amount of indebtedness customer owed to the debtor where unauthorized stock purchase was funded in part by borrowing on margin).

Final Madoff Statement reflects the benefit of this bargain. In *Visconsi v. Lehman Brothers, Inc.*, No. 06-3304, 244 Fed. Appx. 708, 713-14 (6th Cir. 2007), the Court declined to set aside an arbitration award that appeared to apply an expectancy measure of damages against a successor in a Ponzi scheme case and rejected the money in / money out formula as not reflecting the expectations of the parties. *Id.* The Court explained:

Lehman's out-of-pocket theory misapprehends the harm suffered by Plaintiffs and the facts of this case. Plaintiffs gave \$21 million to Gruttadauria, not to hide under a rock or lock in a safe, but for the express purpose of investment, with a hope – indeed a reasonable expectation – that it would grow. Thus, the out-of-pocket theory, which seeks to restore to Plaintiffs only the \$21 million they originally invested less their subsequent withdrawals, is a wholly inadequate measure of damages. Had Gruttadauria invested Plaintiffs' money as requested, their funds would have likely grown immensely, especially considering that Plaintiffs invested primarily throughout the mid-1990s, which, had they hired an honest broker . . . , would have placed their money in the stock market during one of the strongest bull markets in recent memory. In fact, the fictitious statements issued by Lehman, which were designed to track Plaintiffs' funds as if they had been properly invested, indicate that Plaintiffs' accounts would have grown to more than \$37.9 million (even accounting for the withdrawal of more than \$31.3 million). Plaintiffs thus could have reasonably believed that they were entitled to the full \$37.9 million balance shown, regardless of the amounts of their previous deposits and withdrawals.

Id. This applies precisely to the BAM LP Customer Claim.

(e) The Trustee's Determination Letter is contrary to SIPC's own policies and practices, as reflected in the sworn testimony of Stephen Harbeck, SIPC's president and CEO, and its actions in similar liquidation proceedings. For example, in the New Times Securities Services, Inc. ("New Times") SIPA liquidation, in the context of discussing claims filing deadlines, Harbeck acknowledged that if broker-dealer customers have been led to believe that "real existing" securities had been purchased for their accounts, then those customers are entitled to the full value of their securities positions as of the filing date, even if that value

represents a substantial increase from the purported purchase price of the securities and even if the securities had never been purchased. Harbeck testified as follows:

Harbeck: [I]f you file within sixty days, you'll get the securities, without question. Whether – if they triple in value, you'll get the securities . . . Even if they're not there.

Court: Even if they're not there.

Harbeck: Correct.

Court: In other words, if the money was diverted, converted –

Harbeck: And the securities were never purchased.

Court: Okay.

Harbeck: And if those positions triple, we will gladly give the people their securities positions.

Transcript at 37-39, *In re New Times Sec. Servs., Inc.*, No. 00-8178 (Bankr. E.D.N.Y. July 28, 2000).

Moreover, SIPC faced very similar circumstances in the New Times liquidation and took a very different position than it is taking in the Madoff case in support of the Trustee. There, the New Times Trustee's position on "net equity" was in full accord with SIPA, and thus directly contrary to the Trustee's position in this case. Specifically, with respect to any claims that were based on confirmations and account statements reflecting securities positions in "real" securities that could have been purchased (i.e., securities that actually existed on the public market and whose valuations were objectively and publicly verifiable by the customers), the New Times Trustee allowed all such net equity claims to the full extent of the filing date valuations of those securities, even though none of the securities identified in those records had ever, in fact, been purchased by the broker-dealer.³

³ As with Madoff Securities and Bernard Madoff, New Times and its principal, William Goren, defrauded scores of investors by providing them with confirmations and account statements reflecting purported securities investments

(f) The Trustee's determination is inconsistent with the case law. The Second Circuit's discussion of SIPC's claims processing in *New Times*, the only case in this jurisdiction dealing with the issue in the Madoff case, further indicates that, with respect to customers who thought they were invested in listed securities, SIPC properly paid customer claims based on the customers' final account statements, even where the securities had never been purchased:

Meanwhile, investors who were misled . . . to believe that they were investing in mutual funds that in reality existed were treated much more favorably. Although they were not actually invested in those real funds – because Goren never executed the transactions – the information that these claimants received on their account statements mirrored what would have happened had the given transaction been executed. As a result, the Trustee deemed those customers' claims to be “securities claims” eligible to receive up to \$500,000 in SIPC advances. The Trustee indicates that this disparate treatment was justified because he could purchase real, existing securities to satisfy such securities claims. Furthermore, the Trustee notes that, if they were checking on their mutual funds, the “securities claimants,” . . . could have confirmed the existence of those funds and tracked the funds' performance against Goren's account statements.

In re New Times Sec. Servs., 371 F.3d 68, 74 (2d Cir. 2004); *see also* Brief of Appellant SIPC at 23-24, *In re New Times Sec. Servs., Inc.*, No. 05-5527 (Dec. 30, 2005):

[R]easonable and legitimate claimant expectations on the filing date are controlling even where inconsistent with transactional

made on their behalf when, in fact, no such investments had been made and their money had, instead, been misappropriated for other purposes. Two of the investment opportunities Goren purported to offer were: (1) money-market funds that were entirely fictitious (the “Fictitious New Age Funds”); and (2) mutual funds that were entirely real, such as those offered by The Vanguard Group and Putnam Investments (the “Real Securities”). *See In re New Times Sec. Servs., Inc.*, 371 F.3d 68, 71-72 (2d Cir. 2004) (“*New Times I*”). Goren's was “a classic Ponzi scheme,” *id.* at 72 n.2, wherein new investors' money was used to pay earlier investors.

Approximately 900 customers filed claims in the New Times liquidation: 726 for whom the “Real Securities” were purportedly purchased; 174 for whom the “Fictitious New Age Funds” were purportedly purchased. Consistent with SIPA and its legislative history, the New Times Trustee appropriately applied SIPA's net equity definition to the “Real Securities” customers' claims – meaning he paid them according to the full value of those securities positions as of the date of the liquidation filing. When challenged by “Fictitious New Age Funds” customers who had objected that they had not received the same treatment, SIPC and the New Times Trustee (with the apparent concurrence of the SEC) vigorously defended their approach in court.

reality. Thus, for example, where a claimant orders a securities purchase and receives a written confirmation statement reflecting that purchase, the claimant generally has a reasonable expectation that he or she holds the securities identified in the confirmation and therefore generally is entitled to recover those securities (within the limits imposed by SIPA), even where the purchase never actually occurred and the debtor instead converted the cash deposited by the claimant to fund that purchase . . . [T]his emphasis on reasonable and legitimate claimant expectations frequently yields much greater ‘customer’ protection than would be the case if transactional reality, not claimant expectations, were controlling, as this Court’s earlier opinion in this liquidation well illustrates.

BAM LP is in the same position as those investors in the *New Times* case who received confirmations and statements reflecting real securities.

(g) The Trustee’s position in the Madoff case is contradicted, not only by SIPC’s prior treatment of customers in the *New Times* case, but also by a statement that SIPC’s general counsel, Josephine Wang, gave to the press on December 16, 2008 wherein Ms. Wang acknowledged that a Madoff customer is entitled to the securities in their account:

Based on a conversation with the SIPC general counsel, Josephine Wang, if clients were presented statements and had reason to believe that the securities were in fact owned, the SIPC will be required to buy these securities in the open market to make the customer whole up to \$500K each. So if Madoff client number 1234 was given a statement showing they owned 1000 GOOG shares, even if a transaction never took place, the SIPC has to buy and replace the 1000 GOOG shares.

December 16, 2008 Insiders’ Blog, www.occ.treas.gov/ftp/alert/2008-37.html.

(h) The Trustee’s methodology also conflicts with other federal laws. For example, Rev. Proc.2009-20, issued by Commissioner Shulman on March 17, 2009, expressly recognizes the income earned by customers, on which they paid taxes annually. Yet the Trustee’s position is that the income earned by customers on their investments is not their money. In addition, some customers were required to take distribution from their retirement

accounts. Yet the Trustee is deducting from their customer claim the mandatory withdrawals that the customers were required by law to take.

18. In sum, the Trustee has created his own definition of “net equity” that is not based on statutes, prior practice or case law. The procedure is designed not for the benefit of Madoff victims but rather so that the Trustee can avoid paying SIPC insurance to the thousands of Madoff investors who, like BAM LP, have depended upon their Madoff investments for their current and future living expenses.

19. Because of his refusal to comply with SIPA’s mandate that he “promptly” satisfy customer claims based on their last statements, 15 U.S.C. § 78fff- 3(a) and 4(c), the Trustee employs a vast team of forensic accountants to pore through decades of records to determine each customer’s net investment before SIPC pays any amount to a customer. Clearly, this is inconsistent with the statutory scheme and the legislative intent. The BAM LP’s “securities position” is readily ascertainable from the Final Madoff Statement.

V. The Trustee Has No Legal Basis For Reducing The Claim.

20. The Trustee’s action in reducing the amount shown on the BAM LP Customer Claim by any prior gains or withdrawals reflected on the Final Madoff Statement or prior statements is an attempt to avoid such gains without alleging any grounds for avoidance or proving that such gains are avoidable under the Bankruptcy Code’s avoidance provisions. Any such disallowance is improper and unjustified, and the Determination Letter should be stricken on that ground alone. *See* Fed. R. Bankr. P. 7001(1) & 7008.

VI. The Trustee’s Reductions Are Barred By The Statue Of Limitations.

21. The Trustee’s action in reducing the amount shown on the BAM LP Customer Claim by gains or withdrawals from the account is an attempt to avoid such gains and withdrawals without alleging any grounds for avoidance or proving that such gains are

avoidable under the state law avoidance provisions or other theories of law. The avoidance of those gains and withdrawals have been taken well beyond any limitations period for avoidance of a claim under either state or federal law.

VII. The Trustee's Denial Is Inconsistent With SIPA.

22. SIPA provides that (a) SIPC shall pay the first \$500,000 of each customer claim, and (b) customers have an unsecured claim against customer property for the balance of their claims which is paid pro rata with other customers. *See* 15 U.S.C. § 78fff-3(a) (“In order to provide for prompt payment and satisfaction of net equity claims of customers of debtor, SIPC shall advance to the trustee [up to] \$500,000 for each customer, as may be required to pay . . . claims.”); 15 U.S.C. § 78fff-2(c)(1)(B) (providing that customers of the debtor “shall share ratably in . . . customer property on the basis and to the extent of their net equities”). As evidenced by the Final Madoff Statement, BAM LP has a valid claim in the amount of \$714,333.85. Therefore, BAM LP is entitled to an advance of \$500,000 and a claim against customer property for the remainder.

VIII. BAM LP Is Entitled To Interest On Its Investments.

23. In the event that the Court should determine that customer claims should not be allowed in the amount of the Final Madoff Statement, then in the alternative, BAM LP is entitled to recover interest or appreciation on its investments based upon the following.

(i) Under New York law, which is applicable here, funds deposited with the Debtors under these circumstances are entitled to interest. *See, e.g.*, N.Y. C.P.L.R. § 5004; N.Y. Gen. Oblig. § 5-501, *et seq.* Accordingly, the BAM LP Customer Claim should be recalculated by adding interest to all funds deposited.

(j) Under New York law, which is applicable here, customers are entitled to any returns Madoff earned on the deposited funds under principles of unjust enrichment.

Accordingly, customer claims should be recalculated by adding the amounts earned by Madoff on the customer's deposits. *See, e.g., Steinberg v. Sherman*, No. 07-1001, 2008 U.S. Dist. LEXIS 35786, at *14-15 (S.D.N.Y. May 2, 2008) ("Causes of action such as . . . conversion and unjust enrichment qualify for the recovery of prejudgment interest."); *Eighteen Holding Corp. v. Drizin*, 701 N.Y.S.2d 427, 428 (1st Dep't 2000) (awarding prejudgment interest on claims for unjust enrichment and conversion).

(k) BAM LP is entitled to interest on its investment under federal securities laws. In *Randall v. Loftsgaarden*, 478 U.S. 647 (1986), the Supreme Court analyzed the different measures of recovery of "actual damages" for fraud, primarily including rescission and restitution. The *Randall* Court concluded that Congress intended to deter wrongdoers, and hence, that wide latitude in choosing the measure of damages was warranted. *See id.* at 664 (citing *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 151, 92 S.Ct. 1456, 31 L.Ed.2d 741 (1972)). The *Randall* Court continued by holding that:

This deterrent purpose is ill-served by a too rigid insistence on limiting plaintiffs to recovery of their "net economic loss."

Id. at 664 (citing *Salcer v. Envicon Equities Corp.*, 744 F.2d 935, 940 (2d Cir. 1984)).

RESERVATION OF RIGHTS

24. BAM LP reserves the right to revise, supplement, or amend this Objection, and any failure to object on a particular ground or grounds shall not be construed as a waiver of BAM LP's right to object on any additional grounds.

25. BAM LP reserves all rights set forth in Rule 9014, including, without limitation, rights of discovery. *See* Fed. R. Bankr. P. 9014.

26. BAM LP reserves all objections as to the competence, relevance, materiality, privilege, or admissibility of evidence in any subsequent proceeding or trial of this or any other action for any purpose whatsoever.

27. BAM LP incorporates by reference all reservations of rights set forth in the BAM LP Customer Claim.

RELIEF REQUESTED

For the reasons stated herein, the BAM LP Customer Claim should be allowed in its entirety in the amount of \$714,333.85, which is the amount stated on the Final Madoff Statement, plus interest from the date of the Determination Letter.

For the reasons stated herein, this Court should direct SIPC to immediately replace \$500,000 of the securities in the BAM LP Customer Account based upon the values reflected on the Final Madoff Statement, and/or advance BAM LP \$500,000 from the SIPC fund..

For the reasons stated herein, the Determination Letter should be stricken.

BAM LP requests such other relief as may be just and equitable.

Dated: November 16, 2009

SONNENSCHN NATH & ROSENTHAL LLP

By: /s/ Carole Neville
Carole Neville
1221 Avenue of the Americas
New York, New York 10020
Telephone: (212) 768-6700
Facsimile: (212) 768-6800

Attorneys for BAM LP

CERTIFICATE OF SERVICE

I, Carole Neville, hereby certify that on November 16, 2009 I caused a true and correct copy of the foregoing **Objection to Trustee's Determination of Claim** on behalf of BAM LP to be filed electronically with the Court and served upon the parties in this action who receive electronic service through CM/ECF, and served by hand upon:

David J. Sheehan, Esq.
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111

Dated: November 16, 2009

/s/ Carole Neville
Carole Neville

EXHIBIT A

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008¹

NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM

October 19, 2009

BAM LP
Attention: Michael Mann
[REDACTED]
[REDACTED]

Dear Mr. Mann:

PLEASE READ THIS NOTICE CAREFULLY.

The liquidation of the business of BERNARD L. MADOFF INVESTMENT SECURITIES LLC ("BLMIS") is being conducted by Irving H. Picard, Trustee under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. ("SIPA"), pursuant to an order entered on December 15, 2008 by the United States District Court for the Southern District of New York.

The Trustee has made the following determination regarding your claim on BLMIS Account No. 1CM579, designated as Claim Number 9822:

Your claim for securities is **DENIED**. No securities were ever purchased for your account.

Further, based on the Trustee's analysis, the amount of money you withdrew from your account at BLMIS (total of \$3,551,000.00), as more fully set forth in Table 1 annexed hereto and made a part hereof, is greater than the amount that was deposited with BLMIS for the purchase of securities (total of \$2,415,006.61). As noted, no securities were ever purchased by BLMIS for your account. Any

¹ Section 78lll(7)(B) of SIPA states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." Section 78lll(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

and all profits reported to you by BLMIS on account statements were fictitious.

Since there were no profits to use either to purchase securities or to pay you any money beyond the amount that was deposited into your BLMIS account, the amount of money you received in excess of the deposits in your account (\$1,135,993.39) was taken from other customers and given to you. Accordingly, because you have withdrawn more than was deposited into your account, you do not have a positive "net equity" in your account and you are not entitled to an allowed claim in the BLMIS liquidation proceeding. Therefore, your claim is **DENIED** in its entirety.

Should a final and unappealable court order determine that the Trustee is incorrect in his interpretation of "net equity" and its corresponding application to the determination of customer claims, the Trustee will be bound by that order and will apply it retroactively to all previously determined customer claims in accordance with the Court's order. Nothing in this Notice of Trustee's Determination of Claim shall be construed as a waiver of any rights or claims held by you in having your customer claim re-determined in accordance with any such Court order.

Nothing in this Notice of Trustee's Determination of Claim shall be construed as a waiver of any rights or claims held by the Trustee against you.

PLEASE TAKE NOTICE: If you disagree with this determination and desire a hearing before Bankruptcy Judge Burton R. Lifland, you **MUST** file your written opposition, setting forth the grounds for your disagreement, referencing Bankruptcy Case No. 08-1789 (BRL) and attaching copies of any documents in support of your position, with the United States Bankruptcy Court and the Trustee within **THIRTY DAYS** after October 19, 2009, the date on which the Trustee mailed this notice.

PLEASE TAKE FURTHER NOTICE: If you do not properly and timely file a written opposition, the Trustee's determination with respect to your claim will be deemed confirmed by the Court and binding on you.

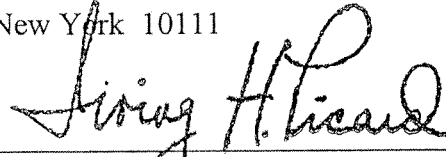
PLEASE TAKE FURTHER NOTICE: If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination with respect to your claim being confirmed by the Court and binding on you.

PLEASE TAKE FURTHER NOTICE: You must mail your opposition, if any, in accordance with the above procedure, to each of the following addresses:

Clerk of the United States Bankruptcy Court for
the Southern District of New York
One Bowling Green
New York, New York 10004

and

Irving H. Picard, Trustee
c/o Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111



Irving H. Picard

Trustee for the Liquidation of the Business of
Bernard L. Madoff Investment Securities LLC

Cc: Carole Neville, Esq.
Sonnenschein, Nath & Rosenthal LLP
1221 Avenue of the Americas, 25th Floor
New York, NY 10020

Table 1 -		
DEPOSITS		
DATE	TRANSACTION DESCRIPTION	AMOUNT
3/26/1999	CHECK WIRE	\$495,000.00
3/26/1999	CHECK WIRE	\$495,000.00
3/26/1999	CHECK WIRE	\$10,000.00
10/2/2000	CHECK WIRE	\$200,000.00
10/3/2000	CHECK WIRE	\$200,000.00
12/19/2000	CHECK WIRE	\$752,808.88
12/20/2000	CHECK WIRE	\$2,075.78
1/16/2001	CHECK WIRE	\$121.95
12/21/2001	CHECK	\$60,000.00
12/21/2001	CHECK	\$60,000.00
12/21/2001	CHECK	\$10,000.00
12/21/2001	CHECK	\$10,000.00
12/21/2001	CHECK	\$10,000.00
12/21/2001	CHECK	\$10,000.00
12/12/2002	CHECK	\$60,000.00
12/12/2002	CHECK	\$10,000.00
12/12/2002	CHECK	\$10,000.00
12/12/2002	CHECK	\$10,000.00
12/12/2002	CHECK	\$10,000.00
Total Deposits:		\$2,415,006.61
WITHDRAWALS		
DATE	TRANSACTION DESCRIPTION	AMOUNT
4/25/2000	CHECK	(\$52,000.00)
10/12/2000	CHECK	(\$43,000.00)
11/7/2000	CHECK WIRE	(\$750,000.00)
4/23/2002	CHECK	(\$70,000.00)
6/25/2002	CHECK	(\$15,000.00)
4/16/2003	CHECK	(\$70,000.00)
1/6/2004	CHECK	(\$100,000.00)
3/2/2005	CHECK	(\$275,000.00)
4/8/2005	CHECK	(\$153,000.00)
12/8/2005	CHECK	(\$1,400,000.00)
1/5/2006	CHECK	(\$60,000.00)
4/17/2007	CHECK	(\$88,000.00)
7/25/2007	CHECK	(\$300,000.00)
10/24/2007	CHECK	(\$50,000.00)
1/23/2008	CHECK	(\$15,000.00)
4/23/2008	CHECK	(\$110,000.00)
Total Withdrawals:		(\$3,551,000.00)
Total deposits less withdrawals:		(\$1,135,993.39)

EXHIBIT B

COPY

CUSTOMER CLAIM

Claim Number _____

Date Received _____

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

RECEIVED

In Liquidation

JUN 17 2009

DECEMBER 11, 2008

Irving H. Picard, Esq.
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

Provide your office and home telephone no.

OFFICE: (212) 768-6889

HOME: _____

Taxpayer I.D. Number (Social Security No.)

Account Number: 1-CM579-3 & 1-CM579-4

BAM LP

Attn: Michael Mann

(If incorrect, please change)

NOTE: BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET. A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT AND, TO RECEIVE THE FULL PROTECTION AFFORDED UNDER SIPA, ALL CUSTOMER CLAIMS MUST BE RECEIVED BY THE TRUSTEE ON OR BEFORE March 4, 2009. CLAIMS RECEIVED AFTER THAT DATE, BUT ON OR BEFORE July 2, 2009, WILL BE SUBJECT TO DELAYED PROCESSING AND TO BEING SATISFIED ON TERMS LESS FAVORABLE TO THE CLAIMANT. PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED.

1. Claim for money balances as of **December 11, 2008**:

- a. The Broker owes me a Credit (Cr.) Balance of \$ _____
- b. I owe the Broker a Debit (Dr.) Balance of \$ _____

information regarding any withdrawals you have ever made or payments received from the Debtor.

Please explain any differences between the securities or cash claimed and the cash balance and securities positions on your last account statement. If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please be sure to provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

PLEASE CHECK THE APPROPRIATE ANSWER FOR ITEMS 3 THROUGH 9.

NOTE: IF "YES" IS MARKED ON ANY ITEM, PROVIDE A DETAILED EXPLANATION ON A SIGNED ATTACHMENT. IF SUFFICIENT DETAILS ARE NOT PROVIDED, THIS CLAIM FORM WILL BE RETURNED FOR YOUR COMPLETION.

- | | <u>YES</u> | <u>NO</u> |
|---|------------|-----------|
| 3. Has there been any change in your account since December 11, 2008? If so, please explain. | _____ | _____✓ |
| 4. Are you or were you a director, officer, partner, shareholder, lender to or capital contributor of the broker? | _____ | _____✓ |
| 5. Are or were you a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the broker? | _____ | _____✓ |
| 6. Are you related to, or do you have any business venture with, any of the persons specified in "4" above, or any employee or other person associated in any way with the broker? If so, give name(s) | _____ | _____✓ |
| 7. Is this claim being filed by or on behalf of a broker or dealer or a bank? If so, provide documentation with respect to each public customer on whose behalf you are claiming. | _____ | _____✓ |
| 8. Have you ever given any discretionary authority to any person to execute securities transactions with or through the broker on your behalf? Give names, addresses and phone numbers. | _____ | _____✓ |

9. Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? if so, give name of that broker. _____ ✓

Please list the full name and address of anyone assisting you in the preparation of this claim form: Carole Neville, Sonnenschein Nath & Rosenthal LLP, 1221 Avenue of the Americas, 25th Floor, New York, NY 10020.

If you cannot compute the amount of your claim, you may file an estimated claim. In that case, please indicate your claim is an estimated claim.

IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM. CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN \$50,000 OR IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR BOTH.

THE FOREGOING CLAIM IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION AND BELIEF. *

Date 6/16/09 Signature Carl C. [Signature], MANAGING PARTNER
Date _____ Signature _____

(If ownership of the account is shared, all must sign above. Give each owner's name, address, phone number, and extent of ownership on a signed separate sheet. If other than a personal account, e.g., corporate, trustee, custodian, etc., also state your capacity and authority. Please supply the trust agreement or other proof of authority.)

This customer claim form must be completed and mailed promptly, together with supporting documentation, etc. to:

Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

* This form includes and incorporates in full the attached Addendum. Customer reserves the right to amend the claim for any purpose, including without limitation, to add interest, costs and other losses associated with this account.

ADDENDUM

Customer: BAM LP
Attn: Michael Mann

Address: [REDACTED]
[REDACTED]

Account #: 1-CM579-3
1-CM579-4

November 30, 2008 Statement – Closing balance net equity \$714,333.85

Affiliated with
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INVESTMENT SECURITIES LLC
New York ☐ London

BAM LP

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YOUR ACCOUNT NUMBER 1-CM579-3-0	
YOUR TAX PAYER IDENTIFICATION NUMBER [REDACTED]	

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRIN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEDUCTED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/12				BALANCE FORWARD		40,319.74	
11/12	390		2536	WAL-MART STORES INC	55.830	21,788.70	
11/12	255		3038	INTERNATIONAL BUSINESS MACHS	87.270	22,263.85	
11/12	945		6862	EXXON MOBIL CORP	72.880	68,908.60	
11/12	1,035		7364	INTEL CORP	14.510	15,058.85	
11/12	495		11690	JOHNSON & JOHNSON	59.580	29,511.10	
11/12	675		16016	J.P. MORGAN CHASE & CO	38.530	26,034.75	
11/12	360		20341	COCA COLA CO	44.660	16,091.60	
11/12	210		24667	MCDONALDS CORP	55.370	11,635.70	
11/12	390		28993	MERCK & CO	28.550	11,149.50	
11/12	1,425		33319	MICROSOFT CORP	21.810	31,136.25	
11/12	720		37645	ORACLE CORPORATION	17.300	12,484.00	
11/12	285		50623	PEPSICO INC	56.410	16,087.85	
11/12	165		51125	APPLE INC	100.780	16,634.70	
11/12	1,215		54949	PFIZER INC	16.940	20,630.10	
11/12	285		55451	ABBOTT LABORATORIES	54.610	15,574.85	
11/12	540		59275	PROCTER & GAMBLE CO	64.080	34,624.20	
11/12	195		59777	AMGEN INC	59.160	11,543.20	
11/12	375		63601	PHILLIP MORRIS INTERNATIONAL	43.600	16,365.00	
11/12	900		64103	BANK OF AMERICA	21.590	19,467.00	
11/12	300		67927	QUALCOMM INC	33.770	10,143.00	
11/12	975		68429	CITI GROUP INC	12.510	12,236.25	
11/12	225		72253	SCHLUMBERGER LTD	49.480	11,142.00	
11/12	540		72755	COMCAST CORP	16.510	8,936.40	
				CL A			
				CONTINUED ON PAGE 2			

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YOUR ACCOUNT NUMBER 1-CM579-3-0	
YOUR TAX PAYER IDENTIFICATION NUMBER [REDACTED]	

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/12	1,065		76579	AT&T INC	27	28,797.00	
11/12	270		77081	CONOCOPHILIPS	52.510	14,187.70	
11/12	180		80905	UNITED PARCEL SVC INC CLASS B	52.040	9,374.20	
11/12	1,095		81407	CISCO SYSTEMS INC	16.730	18,362.35	
11/12	315		85231	U S BANCORP	29.530	9,313.95	
11/12	375		85733	CHEVRON CORP	73.430	27,551.25	
11/12	180		89557	UNITED TECHNOLOGIES CORP	53.160	9,575.80	
11/12	1,905		90059	GENERAL ELECTRIC CO	19.630	37,471.15	
11/12	510		93883	VERIZON COMMUNICATIONS	30.410	15,529.10	
11/12	45		94385	GOOGLE	337.400	15,184.00	
11/12	630		98209	WELLS FARGO & CO NEW	29.800	18,799.00	
11/12	450		98711	HEWLETT PACKARD CO	34.900	15,723.00	
11/12		650,000	20822	U S TREASURY BILL DUE 2/12/2009	99.936		649,584.00
11/12				FIDELITY SPARTAN U S TREASURY MONEY MARKET DIV 11/12/08	DIV		65.71
11/12		51,391	15920	FIDELITY SPARTAN U S TREASURY MONEY MARKET	1		51,391.00
11/12	18,695		25289	FIDELITY SPARTAN U S TREASURY MONEY MARKET DIV 11/19/08	1 DIV	18,695.00	2.25
11/19				CONTINUED ON PAGE 3			

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YOUR ACCOUNT NUMBER 1-CM579-3-0	
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DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/19		18,695	50554	FIDELITY SPARTAN	1		18,695.00
11/19	50,000		55187	U S TREASURY MONEY MARKET	99.926	49,963.00	
11/19	13,674		59593	U S TREASURY BILL DUE 03/26/2009 3/26/2009	1	13,674.00	
				FIDELITY SPARTAN			
				U S TREASURY MONEY MARKET			
				NEW BALANCE		82,229.69	
				SECURITY POSITIONS	MKT PRICE		
	1,065			AT&T INC	28.560		
	285			ABBOTT LABORATORIES	52.390		
	195			AMGEN INC	55.540		
	165			APPLE INC	92.670		
	900			BANK OF AMERICA	16.250		
	375			CHEVRON CORP	79.010		
	1,095			CISCO SYSTEMS INC	16.540		
	975			CITI GROUP INC	8.290		
	360			COCA COLA CO	46.870		
	540			COMCAST CORP	17.340		
				CL A			
	270			CONGCOPHILIPS	52.520		
	945			EXXON MOBIL CORP	80.150		
	1,905			GENERAL ELECTRIC CO	17.170		
				CONTINUED ON PAGE 4			

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YOUR ACCOUNT NUMBER 1-CM579-3-0	YOUR TAX PAYER IDENTIFICATION NUMBER [REDACTED]

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRIN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
	45			GOOGLE	292.960		
	450			HEWLETT PACKARD CO	35.280		
	1,035			INTEL CORP	13.800		
	255			INTERNATIONAL BUSINESS MACHS	81.600		
	675			J-P. MORGAN CHASE & CO	31.660		
	495			JOHNSON & JOHNSON	58.580		
	210			MCDONALDS CORP	58.750		
	390			MERCK & CO	26.720		
	1,425			MICROSOFT CORP	20.220		
	720			ORACLE CORPORATION	16.090		
	285			PEPSICO INC	56.700		
	1,215			PFIZER INC	16.430		
	375			PHILLIP MORRIS INTERNATIONAL	42.160		
	540			PROCTER & GAMBLE CO	64.350		
	300			QUALCOMM INC	33.570		
	225			SCHLUMBERGER LTD	50.740		
	13,674			FIDELITY SPARTAN	1		
				U S TREASURY MONEY MARKET			
	315			U S BANCORP	26.980		
	180			UNITED PARCEL SVC INC	57.600		
				CLASS B			
	50,000			U S TREASURY BILL	99.971		
				DUE 03/26/2009			
				3/26/2009			
				UNITED TECHNOLOGIES CORP	48.530		
	180			CONTINUED ON PAGE 5			

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 YOUR ACCOUNT NUMBER **1-CM579-3-0**
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DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
	510 390 630			VERIZON COMMUNICATIONS WAL-MART STORES INC WELLS FARGO & CO NEW MARKET VALUE OF SECURITIES LONG 724,533.85 10,000 714,333.85	32.650 55.880 28.890		

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YOUR ACCOUNT NUMBER
1-CM579-3-0

YOUR TAX PAYER IDENTIFICATION NUMBER
[REDACTED]

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
				YEAR-TO-DATE SUMMARY DIVIDENDS GROSS PROCEEDS FROM SALES			4,829.48 4,357,247.59

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YOUR ACCOUNT NUMBER
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YOUR TAX PAYER IDENTIFICATION NUMBER
[REDACTED]

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/12				BALANCE FORWARD			40,320.00
11/12	15		41971	S & P 100 INDEX NOVEMBER 460 CALL	15.800		23,685.00
11/19		15	46297	S & P 100 INDEX NOVEMBER 450 PUT	17.800	26,715.00	
11/19		15	32402	S & P 100 INDEX DECEMBER 430 CALL	26		38,985.00
11/19	15		36727	S & P 100 INDEX DECEMBER 420 PUT	30	45,015.00	
11/19	15		41052	S & P 100 INDEX NOVEMBER 460 CALL	3	4,515.00	
11/19		15	45377	S & P 100 INDEX NOVEMBER 450 PUT	37		55,485.00
				NEW BALANCE			82,230.00
				SECURITY POSITIONS			
		15		S & P 100 INDEX DECEMBER 430 CALL	MKT PRICE 23.300		
	15			S & P 100 INDEX DECEMBER 420 PUT	16.500		
				MARKET VALUE OF SECURITIES			
				LONG			
				SHORT			
				24,750.00			
				34,950.00-			
				24,712			